IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.MC.No. 2386 of 2006()

(CRIME NO.64/2006 OF ANCHAL POLICE STATION)

PETITIONER:

RATHEESH, S/O. RAVEENDRAN,
CHARUVILA VEEDU, NELLIPALLY P.O.,
PUNALUR, KOLLAM DIST.

BY ADV. SRI.S.RAJEEV
SRI.K.V.VINODKUMAR

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY**
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.
(CRIME NO.64/2006 OF ANCHAL POLICE STATION.)

2. **JAINAMMA D/O ELIAMMA ANAMUDI HOUSE**
KURAVANCHERRY, ALAYAMON VILLAGE
ANCHAL, KOLLAM

BY PUBLIC PROSECUTOR: SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C. No. 2386 OF 2006

Dated this the 6th day of December 2006

ORDER

The petitioner faces allegations under Section 366 of the I.P.C.. Investigation is in progress. Crime has been registered on the basis of a complaint by the second respondent herein. She complained that her minor daughter under the age of 18 years was found missing . Later investigation revealed that the petitioner and the said girl had gone away and got married They appeared before a Division Bench of this Court in a habeas corpus petition. The learned Judges of the Division Bench had noted that the parties had got married and that that girl was beyond the age of 18 years at the time of appearance.

2. Investigation is continuing even now. The learned counsel for the petitioner submits that in as much as the parties are married now, there is no justification in the further progress of the investigation. I am unable to agree. The offence of kidnapping is an offence against lawful guardianship. The fact that the ward and the accused have compromised has promised the matter is no reason to prematurely terminate the investigation. On the relevant and crucial date there is nothing to show that the girl had attained majority or that the consent of the guardian was

there. Certainly investigation will have to be completed and final report must be filed. What is the outcome of the prosecution cannot be judged now. It is quite possible that the second respondent/ defacto complainant may accept the fait accompli. But she had not appeared before this Court to report that she has accepted the marriage or she has no complaint . In these circumstances the dictum in **B.S.Joshi Vs.State of Haryana** (AIR 2003 SC 1386) cannot also be invoked even assuming it can be invoked if there is a compromise by the guardian. However I find that unnecessary prejudice hardship and inconvenience to the petitioner can be avoided by issuing directions under Section 438 of the Cr.P.C in favour of the petitioner. The interests of justice will be eminently served by such a direction. Thereafter the police can complete the investigation expeditiously and file the final report.

3. In the result the Crl.M.C. is allowed in part and the following directions are issued

(a) The petitioner shall surrender before the learned Magistrate having jurisdiction at 11 A.M on 13-12-2006

(b) He should be released on bail on his executing a bond for

Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(c) He shall make available himself for interrogation before the Investigating Officer between 10 A.M. and 4 P.M on 14-12-2006 and thereafter as and when directed by the investigating officer in writing to do so.

4. If the petitioner has not appear before the learned Magistrate as directed above, these directions shall lapse and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law.

` 5. Hand over a copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

R.BASANT, JUDGE

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